

APPEAL NO. 042004  
FILED OCTOBER 7, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 13, 2004. The hearing officer determined that the respondent/cross-appellant's (claimant) compensable injury of \_\_\_\_\_, extends to and includes lumbar degenerative disc disease, bulging discs from L1 to L5, spondylosis, and facet arthropathy; and, that the claimant only had disability beginning January 15, 2004, through the date of the CCH, and at no other times. The appellant/cross-respondent (carrier) appealed the extent-of-injury and disability determinations based on sufficiency of the evidence grounds. The claimant cross-appealed that portion of the disability determination that was adverse to the claimant, arguing that the hearing officer exceeded his authority by using limiting language of "only" and "at no other times" in his disability determination. In his response to the carrier's appeal, the claimant urges affirmance. The appeal file does not contain a response from the carrier.

DECISION

Affirmed, as reformed.

The hearing officer did not err in making his extent-of-injury determination. That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was persuaded by the evidence that the claimant sustained his burden of proving that his compensable injury of \_\_\_\_\_, extends to and includes lumbar degenerative disc disease, bulging discs from L1 to L5, spondylosis, and facet arthropathy. Nothing in our review of the record reveals that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the extent-of-injury determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The disability issue is a question of fact for the hearing officer to resolve. The hearing officer determined that the claimant "**only**" had disability from January 15, 2004, through the date of the CCH, and "**at no other times.**" (Emphasis added.) The carrier appealed this determination based on sufficiency of the evidence grounds, and the claimant appealed that portion of the disability determination that implied that the claimant did not have disability prior to January 15, 2004. The claimant contends that the hearing officer exceeded his authority in determining a period of disability issue that was not before him, and that his conclusion of law and decision would allow the carrier

to dispute a period of disability, "which had previously been established and accepted." We agree.

The disability issue at the CCH was phrased in terms of whether the claimant had disability from January 15, 2004, through the present as a result of the compensable injury. The hearing officer's Finding of Fact No. 6 states that "Due to the claimed injury Claimant was unable to obtain and retain employment at wages equivalent to Claimant's preinjury wage beginning January 15, 2004, through the date of this hearing." The hearing officer's disability finding indicates that he intended to conclude that the claimant had disability from January 15, 2004, through the date of the CCH, in accordance with the dates identified in the issue. Accordingly, we modify the hearing officer's Conclusion of Law No. 4 and the decision section to properly reflect that the claimant had disability for the period at issue. Specifically, we modify Conclusion of Law No. 4 and the decision section to state that the claimant had disability beginning January 15, 2004, and continuing through the date of the CCH.

The hearing officer's decision and order are affirmed, as reformed.

The true corporate name of the insurance carrier is **EMPLOYERS INSURANCE COMPANY OF WAUSAU** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL STREET, SUITE 2900  
DALLAS, TEXAS 75201.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge